

Kulas v. Arizona, 04-15527

NOV 28 2005

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

BEEZER, Circuit Judge, dissenting:

Attorney's fees are awarded against a civil rights plaintiff only if the plaintiff's action is frivolous, unreasonable or without foundation. *Christiansburg Garment Co. v. Equal Employment Opportunity Comm'n*, 434 U.S. 412, 421 (1978). This standard is applied with special force when the plaintiff is proceeding pro se and may not be able to recognize the "subtle factual or legal deficiencies in his claims." *Hughes v. Rowe*, 449 U.S. 5, 15 (1980). A district court should consider the financial resources of the plaintiff in awarding attorney's fees and may not advance the deterrent goal of attorney's fees at the cost of subjecting the plaintiff to financial ruin. *Miller v. L.A. County Bd. of Educ.*, 827 F.2d 617, 621 (9th Cir. 1987). Kulas was an indigent plaintiff proceeding pro se in a civil rights action. The award of attorney's fees was improper.